

David Ward  
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Attorneys for Defendants  
Bill Dunn, James Griffin, Frank Anello,  
Eddie Maldonado, Brenda Johnson, and Gloria Ran

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RAMON MODESTO,  Plaintiff,  vs.  HECTOR FIGUERORA, et al.,  Defendants.	CIV. NO. 15-495 (RA)  <b>DECLARATION OF DAVID WARD IN SUPPORT OF MOTION TO DISMISS AND EXTEND TIME TO ANSWER</b>
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I David A. Ward, a member in good standing of the bar of this Court, hereby state under penalty of perjury that:

1. I am a partner in the law firm Kluger Healey, LLC, counsel for Defendants Bill Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson, and Gloria Ran, in the above captioned action.

2. On January 21, 2015, Plaintiff filed this pro se action against Defendants Bill Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson, and Gloria Ran, among others, alleging violation of Title VII of the Civil Right Act of 1964, 42 U.S.C. §§2000e, et seq.,

("Title VII"); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 ("the ADEA"); and claims pursuant to the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 ("NYCHRL").

3. Defendants Bill Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson, and Gloria Ran were all sued individually in their capacities as employees of non-party Securitas Security Services, USA, Inc. ("Securitas").

4. On February 4, 2015, Plaintiff, via counsel, filed a Complaint against Securitas in an action captioned *Modesto v. Securitas* (USDC SDNY 15cv829)(RJS), alleging substantially similar facts and claims as those alleged against the individual Securitas defendants here. (See Docket Entry No. 1 and 13 in 15cv829).

5. On February 3, 2015, Plaintiff filed a pro se action under *Modesto v. Securitas et al.*, (USDC SDNY 15cv895)(LAP), naming as defendants Securitas and the individual Securitas defendants named in the present action, again alleging substantially similar facts and claims as those alleged against the individual Securitas defendants here. (See Docket Entry No. 2 and 3 in 15cv895).

6. On February 17, 2015, this Court dismissed the matter *Modesto v. Securitas et al.*, (USDC SDNY 15cv895)(LAP), as an improper duplicative action. (See Docket Entry No. 3 in 15cv895).

7. On April 23, 2015, our office wrote to counsel for Mr. Modesto in the 15cv829 action, demanding that he dismiss and/or move to consolidate the two pending duplicative actions (the present action and *Modesto v. Securitas* (USDC SDNY 15cv829)(RJS)).

8. Mr. Modesto's counsel responded stating that his client intended to proceed with both actions, but he would discuss the matter with his client and with Judge Sullivan at an initial status conference scheduled for June 5, 2015.

9. On May 7, 2015, I wrote to Mr. Modesto in his pro se capacity in this case and also demanded that Mr. Modesto dismiss and/or move to consolidate the two pending duplicative actions. A copy of that letter is annexed as Exhibit A.

10. I also asked Mr. Modesto to consent to an extension of time to respond in the present action until such time as Mr. Modesto had resolved which action he intended to pursue and in which court.

11. Mr. Modesto has failed to return the stipulation or otherwise respond to my May 7, 2015 correspondence.

12. During a June 5, 2015 initial conference before Judge Sullivan, Mr. Modesto participated and requested additional time to determine whether and how he would proceed with the duplicative actions.

13. On June 12, 2015, Modesto wrote to the Court in the 15cv829 action, informing the Court that he is proceeding pro se in *Modesto v. Figueroa*, No. 15-cv-495 (RA), and requesting that the Court consolidate this action with the *Figueroa* action. (Doc. No. 11 in 15cv829.)

14. On June 19, 2015, I wrote to the Court in 15cv829, requesting that the Court dismiss that action as impermissibly duplicative of the *Figueroa* action or consolidate. (Doc. No. 12 in 15cv829.)

15. On June 22, 2015, the Court in 15cv829 dismissed that action as duplicative of this pending action.

16. As a result it appears evident that this action is the one to proceed and the undue motion practice we had been seeking to avoid is now inevitable in this matter as a motion to dismiss is required as against the individual Securitas defendants as there is no pending claim against Securitas.

17. According to the return of service in this matter, service was effected on the individual Securitas defendants on April 28, 2015 by serving the Securitas Human Resources manager, and their answer was due May 19, 2015.

18. I respectfully submit that circumstances warrant an extension of time to Answer or otherwise move in response to the Complaint as it remained uncertain until as of June 22, 2015 whether Mr. Modesto was going to proceed with or dismiss this action, as reflected at the June 5, 2015 conference before Judge Sullivan.

19. Now that Mr. Modesto has stated his intention to proceed with this action, the individual Securitas defendants seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6).

Dated: Tinton Falls, New Jersey  
June 22, 2015

Very truly yours,  
**KLUGER HEALEY, LLC**

By: /s/ David A. Ward  
David A. Ward, Esq.  
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# EXHIBIT A

May 7, 2015 Letter From David A. Ward, Esq., to Ramon Modesto



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May 7, 2015

Mr. Ramon Modesto  
4029 67<sup>th</sup> Street, 2F  
Woodside, NY 11377

**Re: Modesto v. Figueroa, et al.**  
**Civil Action No: 15-cv-495**

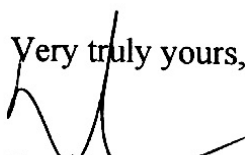
Dear Mr. Modesto:

This firm represents Securitas Security Services USA ("Securitas") in the matter you have filed (Modesto v. Securitas Security Services, USA, Inc., Civil Action No. 15cv829 (SDNY) and also represents Defendants Bill Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson, and Gloria Ran in the parallel case captioned *Modesto v. Hector Figueroa, et al.* Civil Action No. 15-cv-495.

I am writing because the Court has already dismissed another action arising out of the same facts (15cv895) in the same court, and that very same outcome is certain to apply to at least one of the still pending actions. I would like to avoid unnecessary motion practice and hereby request that you dismiss either this action, or the pending action against Securitas in Civil Action No. 15cv829, or consolidate these actions, to which we will consent.

Pursuant to the Court's Local Civil Rule 1.6, you have an obligation to bring this issue to the Court's attention and a resolution. If we are forced to bring a motion to dismiss or consolidate we will seek fees and costs for having to do so. I am enclosing a stipulation extending the time for the individual defendants to Answer or move in *Modesto v. Hector Figueroa, et al.* Civil Action No. 15-cv-495 so that we do not have to proceed by way of a motion to dismiss and may instead resolve these procedural issues and proceed to address one matter, on the merits. Kindly sign and return to me in the enclosed self addressed stamp envelope. If you do not intend to do so please notify me immediately and we will commence motion practice.

Encls.

Very truly yours,  
  
David A. Ward